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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. 8:17-cv-00277-JLS-JCG

Date: May 11, 2018

Title: Tokio Marine Specialty Insurance Company v. City of Laguna Beach

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Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero  
Deputy Clerk

N/A  
Court Reporter

Attorneys Present for Plaintiff:

Not Present

Attorneys Present for Defendant:

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: STAY AS  
TO THE CITY'S COUNTERCLAIMS**

This insurance coverage action arises out of a commercial liability policy issued by Plaintiff/Counter-defendant Tokio Marine Specialty Insurance Company (“Tokio”) to Defendant/Counter-plaintiff City of Laguna Beach (the “City”). Tokio is currently defending the City in a state court lawsuit (the “Underlying Action”) for damages arising from a sewer backup. (See MSJ Order at 2–3, Doc. 52.) In the instant coverage action, Tokio alleges two claims for declaratory relief that it has no duty to defend or indemnify the City in the Underlying Action and two claims for reimbursement of amounts paid in defense or indemnification for the Underlying Action. (*Id.* at 4.) The City has counterclaimed for breach of contract for Tokio’s failure to provide independent counsel in the Underlying Action and declaratory judgment that Tokio is obligated to pay for independent counsel. (*Id.*)

On December 18, 2017, the Court denied the City’s motion for partial summary judgment as to its declaratory relief counterclaim, finding that the City had not demonstrated an actual conflict of interest between itself and Tokio in defense of the Underlying Action. (*Id.* at 7–8.) However, the Court granted the City’s motion for partial stay as to Tokio’s claims, finding that there were factual issues that would be resolved in the Underlying Action that could affect the factual issues raised by Tokio’s claims. (*Id.* at 9–10.)

It appears to the Court that the manner in which the Underlying Action is prosecuted will also affect the outcome of the City’s counterclaims. Therefore, under

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California law, a stay is mandatory as to these counterclaims. (*Id.* at 8–9, “If the factual issues to be resolved in the declaratory relief action overlap with issues to be resolved in the underlying litigation, the trial court must stay the declaratory relief action.”)

Therefore, the parties ORDERED to show cause why the Court should not stay the entire action pending resolution of the Underlying Action. Any response must be filed within **three (3) days** of entry of this Order. Failure to timely respond will constitute consent to the entry of a stay.

Initials of Preparer: tg